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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/657,583

09/08/2003

Thomas G. Cremers

6197US

9891

30173 7590 12/21/2006
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EXAMINER

HUYNH, LOUIS K

ART UNIT.

PAPER NUMBER

3721

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

12/21/2006

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/657,583

Applicant(s)

CREMERS ET AL.

Examiner

Louis K. Huynh

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 November 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 and 32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 3-10 and 32 is/are allowed.
- 6) ☒ Claim(s) 1,2,11-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Applicant's amendment has overcome the rejections of claims 1-4 and 32 under this section. The rejections of claims 1-4 and 32 under 35 U.S.C. 112, 2nd paragraph are hereby withdrawn.

3. Claim 10 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

- Claim 10, line 2: "a pair of folder lever arms" render the claim indefinite for it is unclear as to what folder lever arms applicant is referring.
- Claim 13, line 1: "the nester conveyor" lacks proper antecedent basis.
- Claim 14, line 3: "the first operational speed of the nester conveyor" lacks proper antecedent basis.
- Claim 17, line 2: "the convergence volume" lacks proper antecedent basis.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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5. Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Budde et al. (US 5,300,011).

With respect to Claim 1, Budde discloses an apparatus for folding an object (12) including: a frame (cross hatched member), first and second pivot shafts rotationally connected to the frame, first and second lever arms (78 in FIG. 6) respectively perpendicularly connected to the first and second pivot shafts for pivoting with respect to the frame, and a first and a second folder fingers (74a) respectively connected to the first and second pivot shafts via respective extensions (78 in FIG. 7) and the respective first and second lever arms (78 in FIG. 6); wherein each of the first and second finger (74a) lies on a line of extension that lies on the plane of the paper and the pivot shaft is perpendicular to the plane of the paper, and wherein the folder fingers (74a) are adapted to engage the object (12) (FIGS. 6, 7 & 9H).

With respect to Claim 2, Budde further discloses in FIGS 6 & 7 a third and fourth pivot shafts connecting the lever arms (78) to a reciprocating plate (76). The third and fourth pivot shafts are considered to be cam followers since they follow the reciprocating movement of the plate (76).

6. Claims 11-13 are rejected under 35 U.S.C. 102(b) as being anticipated by VanderMeer et al. (US 5,271,709).

With respect to claims 11-13, VanderMeer discloses an apparatus for nesting a group of articles (12) comprising an accumulating conveyor (22) having a first operational speed and a second operational speed that is slower than the first operational speed (col. 6, lines 22-68), and sensor (86) and other additional sensors for detecting movement of the articles (col. 6, lines 8-

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21); wherein the conveyor (22) shifts from the first operational speed to the second operational speed as a predetermined number of articles are swept off the conveyor (col. 6, lines 43-53), and the conveyor (22) shifts to the first operational speed as the group of articles has been swept off the conveyor (col. 6, lines 62-68).

Note that “means for transporting taco shells” has not been considered under 35U.S.C. 112, 6th paragraph because the transporting means has been structural modify by having a first and second operational speeds which inherently includes a driving means capable of having two different operational speeds, the transporting means has been further structurally modified by shifting from the one operational speed to another based on a sensed condition which inherently include a processing means for determined the sensed condition. Therefore, the means for transporting has been considered to be a conveyor, and the accumulation conveyor disclosed in the reference to VanderMeer structurally satisfies the claimed apparatus of claims 11-13.

7. Claims 15-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Gallagher (US 6,018,933).

With respect to claims 15 and 17, Gallagher discloses an apparatus for compressing a group of articles comprising a pair of vertical side walls (40A & 42A) forming two sides of a holding volume adapted to hold a group of articles (P) and adapted to converge toward each other to hold and align the group of articles (P), a ceiling structure (32A) located above the holding volume and adapted to engage the upper portion of the articles (P), and a gate (70A) pivotable between a vertical position and a horizontal position (FIGS. 5 & 6).

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With respect to claim 16, although the ceiling structure (32A) is different in structure from the claimed plate, it is considered to be equivalent to the claimed plate for they both serve the same purpose of preventing the articles from moving upward during alignment/compression.

Note that “means for holding a nested group of taco shells” has not been considered under 35 U.S.C. 112, 6th paragraph because the “means for holding a nested group of taco shells” would consist of a conveyor 16 for supporting the taco shells and the squeeze gate/stop assembly 70 describe on page 13, paragraph 066, and illustrated in FIGS. 7 & 8 when considered under the 6th paragraph; which already includes: stop flap 355, first stop guide 360, second stop guide 365, a cylinder 370, etc. (see paragraph 066 on page 13 of the specification). Claim 15 further includes a pair of opposed sides and a structure located above the holding means that would made the holding means having a pair of opposed double sides and two structures located above the holding means, and such a device is not disclosed in the present specification. Therefore, the “means for holding a nested group of taco shells” or “holding means” is considered to be a three dimensional space capable of holding a nested group of taco shells. And as such, the apparatus disclosed in the reference to Gallegher structurally satisfies the claimed apparatus of claims 15-17.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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9. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over VanderMeer et al. (US 5,271,709).

The apparatus of VanderMeer meets all of applicant's claimed subject matter but lacks the specific teaching of an infeed conveyor having an operational speed that is less than the first operational speed of the accumulating conveyor for feeding the article to the accumulating conveyor. However, articles must be fed from an upstream conveyor, such as an output conveyor of a packaging machine, to the accumulating conveyor (22), and the operational speed of the upstream conveyor should be less than the first operational speed of the accumulating conveyor because the group of predetermined number of articles must be separated from the stream of input articles and this process is well known to the artisan in the art of conveying group of articles. Therefore, it would have been obvious to a skilled person in the art, at the time of the invention, to have provided the apparatus of VanderMeer with an input conveyor operating at a speed less than the first speed of the accumulating conveyor so that a predetermined number of articles could be separated from the stream of articles coming from the input conveyor.

Allowable Subject Matter

10. Claims 3 and 4 are allowed over the art of record.

11. Claims 5-10 are allowed over the prior art of record because the claims require "means for retaining a nested group of taco shells" which has been considered under 35 U.S.C. 112, 6th paragraph to consist of a conveyor 16 for supporting the taco shells and the squeeze gate/stop assembly 70 describe on page 13, paragraph 066, and illustrated in FIGS. 7 & 8; wherein the squeeze gate/stop assembly 70 comprises the following basic components: stop flap 355, first stop guide 360, second stop guide 365, a cylinder 370, etc. (see paragraph 066 on page 13 of the

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specification). The prior art of record fails to disclose and/or teach a “means for retaining a nested group of taco shells” or an equivalent thereof.

12. Claims 32 is allowed because the prior art of record fails to disclose and/or teach an assembly for folding an insert, nesting individual taco shells to form a nested group of taco shells, placing the insert within the group of taco shells, and aligning the nested group of taco shells as claimed.

Interview Summary

13. Applicant’s assertion of patentably defining the invention over the prior art of record upon amending the claims to include “means plus function” being agreed by the examiner during the phone interview on 09/07/2006 is inaccurate (see Applicant’s Remarks filed 11/07/2006, page 9, lines 7-11). The examiner only agreed to consider the claims accordingly (see Interview Summary mailed 9/13/2006). Applicant is respectfully requested to withdraw the statement on page 9, lines 10-11, of the reply filed 11/07/2006.

Response to Arguments

14. Applicant’s arguments filed 11/07/2006 have been fully considered but they are not persuasive. With respect to claim 1, applicant contends that the reference to Budde et al. does not disclose first and second fingers that are pivotally connected to and extend substantially perpendicular from the first and second pivot shafts. This is not found persuasive because the first and a second folder fingers (74a) respectively connected to the first and second pivot shafts via respective extensions (78 in FIG. 7) and the respective first and second lever arms (78 in FIG. 6) and each of the first and second finger (74a) lies on a line of extension that lies on the plane of the paper and the pivot shaft is perpendicular to the plane of the paper. Thus the apparatus for

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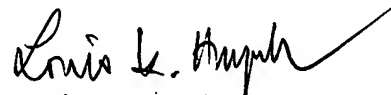
folding object disclosed in the reference to Budde et al. structurally satisfies the claimed apparatus of claim 1.

Conclusion

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Louis K. Huynh whose telephone number is 571-272-4462. The examiner can normally be reached on M-F from 8:00AM to 3:00PM.

16. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

17. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Louis K. Huynh
Primary Examiner
Art Unit 3721

December 13, 2006